

July 8. 1767.

A N S W E R S

F O R

GEORGE GILLENDERS, and *John Ding-*
wall his factor ;

T O T H E

PETITION of JOHN BIRTWHISTLE, Dro-
ver in *Skippen of Craven.*

THE petition now to be answered, reclaims against the Lord Ordinary's interlocutors, therein fairly recited, of dates the 7th, 24th, and 27th days of February, and 7th March 1767, whereby action is sustained at the respondent's instance, and the petitioner decerned in payment to him of 483 l. 7 s. 10 d. Sterling, being the price of a parcel of cattle purchased by the petitioner from *George Gillenders*, factor on the *Lewis*, in security of which he had indorsed to the respondent, as agent for the said *George Gillenders*, certain promissory notes; as also, decerning for the sum of 16 l. 12 s. 2 d. paid by the respondent, upon the defender's account, to *Kenneth Mackenzie junior*, merchant in *Stornoway*, and for the interest of these two sums, *nomine damni*, from the 15th January 1766, when the summons was executed, and modified the account of expences to 17 l. 17 s. exclusive of the expence of extracting the decret.

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No exception is taken to the article of 16 *l.* 12 *s.* 2 *d.* but, with respect to the other and greater debt of 483 *l.* 7 *s.* 10 *d.* the sum of the defence as restated in this reclaiming petition, is the respondent's having failed in the regular negotiation of the aforesaid promissory note, by means of which, and the supervening insolvency of the granter of these notes, as the petitioner was disabled from recovering payment of these notes from the granter, and consequently, that the loss from thence arising, ought to lye upon the respondent, by whose neglect or omission that loss was sustained.

Did the law stand, as the petitioner is pleased to suppose, requiring the same strictness and punctuality in negotiating these inland promissory notes, as is requisite in negotiating either inland or foreign bills of exchange, which the respondent will, in the sequel, take the liberty to dispute; and supposing the respondent to have been guilty of that *modica mora*, of which advantage is endeavoured to be taken; the use that is now attempted to be made thereof, to forfeit the respondent of this large sum, as the price of the cattle actually received and disposed of by the petitioner, cannot but appear extremely unfavourable.

Of late years, it has been usual for the dealers of black cattle in our neighbouring country, to come or send to the remotest parts of *Scotland* to purchase cattle:—The petitioner *Birtwhistle* deals deep in that branch of trade.

And as it would not be an easy matter to carry so much specie about with them, from place to place, as would be sufficient to pay the price of the cattle, their usual method is, as they pass thro' this part of the country, to procure from the bankers in this town promissory notes for different sums, payable at some distance of time, when 'tis thought they will have accomplished their round, and picked up all the cattle they mean to purchase, and for reimbursement

bursement of the bankers here, from whom they have obtained these promissory notes, draw bills upon their correspondents at *London*.

The respondents have been informed, and believe it to be true, that the value given for these promissory notes, which are now the subject in question, was bills for equivalent sums, drawn by *Birtwhistle* upon *London*, payable to *Berry*, the granter of these promissory notes; but which bills were returned dishonoured and protested; and if that shall appear to be the case, as it would have afforded a good defence to *Berry* himself in a question with *Birtwhistle*, against payment of these promissory notes, it must be equally available to the respondent; but as there is hitherto no sufficient evidence how that fact stands, the answer to this reclaiming petition must proceed upon supposition, that no defence was competent to *Berry* against payment of these promissory notes; and the question from thence arising, is, whether the respondent, *qua* indorsee to these notes, has lost his recourse against *Birtwhistle* the indorser, on account of the alledged undue negotiation of these promissory notes, and the fact upon which that question arises, stands shortly thus:

In May 1765, *John Birtwhistle*, in his way to the *West-Highlands*, and isles of *Scotland*, took from *James Berry* late banker in *Edinburgh*, various promissory notes, for different sums, and amongst these two notes, the one for 300 *l.* the other for 200 *l. Sterling*, both dated the 30th May 1765, payable one month after date to *John Birtwhistle*, or order, whereby these promissory notes became due, and were payable upon the 30th June 1765, and, according to the petitioner's doctrine, if not paid on that precise day, ought to have been protested: For tho' in proper bills of exchange, which are *juris gentium*, the law and practice has allowed three days of grace, there is neither law nor practice for allowing the like days of grace in promissory notes,

notes, nor is it necessary there should. because the party who grants these promissory notes, knows when they are payable, and ought to be prepared; whereas those upon whom bills of exchange are drawn, having no previous notice when such bills are to come upon them might be caught unprepared; wherefore, the law and practice has, with great propriety, allowed these lay-days to prevent surprize, and make the necessary preparations for answering the draughts.

Furnished with these promissory notes, *John Birtwhistle* proceeded to the *Lewis*, one of the remotest islands in *Scotland*, where he purchased from *George Gillenders*, of his own and the poor tenants cattle in that country, 189 cows and 146 stots, tho' these last, viz. the stots, are in the reclaiming petition said to amount only to 14, the price of the whole extending to the above mentioned sum of 483 l. 7 s. 10 d.

June 25. 1765. For *Gillender's* security and payment of this sum, *Birtwhistle*, of this date, indorsed to the respondent *John Dingwall*, for behoof of the other respondent *George Gillenders*, the aforesaid two promissory notes, bearing to be for value received: For, tho' the indorsations themselves bear no date, yet that, *de facto*, they were indorsed no earlier than the said 25th June 1765, is proved by a docquet of that date, subjoined to a list of the cattle purchased by *Birtwhistle*, of the following tenor: "*Stornoway, 25th June 1765, The above 189 cows, and 146 stots, extending the price to 483 l. 7 s. 10 d. Sterling, is the sum for which the said Mr. John Birtwhistle has indorsed bills to Mr. George Gillenders, factor of the Lewis, of this date, with recourse.*"

And, as your Lordships will from thence perceive, that there remained but five days between the indorsation and the term of payment of these promissory notes; or, supposing the three days of grace to be added, it was scarce practicable, tho' an express had been instantly dispatched from

from the *Lewis*, exposed to so many stops, and other accidents by the way, that these promissory notes could have come to the hands of the respondent *John Dingwall*, in such time, as to be protested when they became due and payable.

The distance by water, between the island of *Lewis* and *Pollew*, which is the nearest landing port upon the main land, is about 15 leagues of one of the most tempestuous seas in the world; and the distance from *Pollew* to *Edinburgh*, occasioned by the circuit which the post makes by *Dingwall*, and from thence coastwise by *Aberdeen* to *Edinburgh*, is so great, as will satisfy your Lordships, that it could not possibly be in the view of parties, that these promissory notes should be presented, protested, &c. precisely as they became due.

Gillenders lost no time in transfixing these promissory notes to *Edinburgh* to the other respondent, as appears from the letter which accompanied them, wrote from *Stornoway*, of this date; and from this letter it appears, that *Gillenders* had no acquaintance of *Berry*, the granter of these notes, nor any knowledge of his circumstances; but relying intirely upon the faith and credit of *Birtwhistle*, did from thence conclude, that *Berry* must be a good man, since *Birtwhistle* had indorsed his notes, which this letter says will be due before they could reach *Edinburgh*.

June 26.
1765.

Accordingly it happened, that the aforesaid letter and notes did not reach *Edinburgh*, or come to the other respondent *John Dingwall*'s hand sooner than the 6th *July*, that is, seven days after the term of payment of the notes; so that, *esto* it had been requisite to protest them for non-payment upon the 30th *June*, or on the 2d *July*, being the last day of grace, supposing them to stand upon the same footing with bills of exchange, this was in nature impracticable.

How soon the notes came to *John Dingwall*'s hands, he waited upon Mr. *Berry*, who was then in as high credit as

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any banker in this city, being the presumptive heir both to a rich father and uncle, who had set him up in trade; and as he could not then have the smallest suspicion of Mr. *Berry's* bankruptcy, which did not break out till the 25th *July*, it is undoubtedly true, that the respondent was put off from day to day upon assurances of payment, till the 13th *July*, when upon the payment not being made, he protested the notes.

The respondent was greatly diffculted, how to notify the dishonour of these notes to *Birtwhistle*: He knew of *Birtwhistle's* having gone to the west islands, but whether he had returned from thence, and supposing him still to be in that country, where to find him was quite uncertain: It was, therefore, thought proper, to address the letters of advice to his usual place of residence in *Yorkshire*: And accordingly three several letters of advice were wrote; the first dated 16th *July*, but which, from the post mark, appears not to have gone off till the 18th; the second dated the 20th, and which, from the post mark, appears to have been sent off of that same date; the third dated the 21st, and which, from the post mark, appears to have been sent off only upon the 23d.

The petitioner, willing to grasp at every shadow that can be laid hold of, is pleased to suppose, that the respondent had vitiated *ex post facto*, and altered the date of the first of these letters, and that it must originally have stood the 18th, as it carried that day's post mark; and some alterations is apparent upon the face of the date as it now stands the 16th, and which he is pleased to suppose must have been done of design to conceal the neglect of notifying the dishonour of these notes, said to have been protested upon the 13th, no sooner than the 18th: Nay, so much further does the petitioner carry his suspicions, as even to suppose, that it cannot be true that these notes were
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protested upon the 13th, or indeed sooner than the 20th *July*, because no notice is taken of that protest in the aforesaid letter, whether the true date thereof shall be supposed to have been the 16th or the 18th.

Every person conversant in writing letters must know, from his own experience, how apt one is, whether from inattention or forgetfulness, to mistake the day of the month, and immediately, upon recollection, to amend the same, especially where the precise date appeared at the time to be of no consequence: And though the respondent cannot now, from his memory, recollect what occasioned this momentary mistake in the date of that first letter, he can, with the greatest truth, declare, that any alteration apparent upon the date thereof, neither did, nor could proceed from any other motive, if it shall be supposed that the amendment or alteration of the date was made by him; nor will your Lordships be surpris'd, that so trivial a circumstance has escap'd his memory: For as to the other circumstance, upon which much stress has been laid, *viz.* that from the post markings upon the backs of these letters, it appears, that the letter bearing date the 16th, was not sent off till the 18th; the very same thing appears to have happened to the letter of the 21st, the post marking of which bears to be the 23d:—It is not unusual for letters that have either been too late of coming to the post house, or which by oversight of the clerks have not been sent off, to be allowed to ly over till the next opportunity offers; and as the post mark must be of the precise date it is sent off, it thus frequently happens, that the date of the letter and of the post mark do not correspond: And as the respondent has hitherto discharged the duty of his profession without reproach, he flatters himself, that your Lordships will not believe him capable of the falshood and deceit which the petitioner would make your Lordships believe

lieve he had committed, in vitiating the date of this letter, when he could not have the most distant prospect of any question such as this, that should render the antedating this said letter, in any degree material.

But the petitioner does not rest here: He insists, that however the protest is made to bear date the 13th it cannot possibly have been so, as the letter of the 16th takes no notice of any such protest, which it is not to be thought would have been neglected, had any such protest been truly taken; so that, upon the whole, it is impossible to suppose these promissory notes to have been protested sooner than the 20th, as it was by the postscript of the letter of that day's date, that notice was first taken, that these promissory notes had been protested.

It will not require many words to convince your Lordships, how inconclusive and groundless these suspicions are: The letter of the 16th gave notice of the promissory notes being dishonoured, and prays directions how to proceed therein: It was certainly the intention of that first letter, to have notified, not only the dishonour of the promissory notes, but also, of their being protested: And as the respondent firmly believed, that this had been part of the contents of said letter, so under that apprehension, in writing the next letter, did most naturally refer to the former letter, as having therein notified the notes being protested; a circumstance of so very little consequence the one way or the other, that it is surprising the petitioner should infer suspicions of this kind; so prejudicial to the character of any man of business, without the clearest and most indubitable proofs.

The protesting these notes is verified in the way and manner required by law, *viz.* by the instrument of a public notary, with the names and designations of the witnesses present thereat; it is, therefore, *probatio probata*, that
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such truly was the fact, unless the petitioner will undertake to disprove the same.

The respondent is in like manner found fault with, for having said in the condescendence, that the dishonour of these promissory notes was verbally notified to him, the petitioner, a day or two after the protest was taken, which the petitioner observes could not possibly be so, supposing the notes to have been protested upon the 13th, as from the letter in process it appears, that it was not till after the 21st that he, *Birtwhistle*, came to *Edinburgh*.

The respondent makes no difficulty to acknowledge his mistake in this particular, when condescending from memory upon the precise dates of facts, to which at the time he gave no great attention, as thinking it to be immaterial, whether the verbal notice was a few days sooner or later; thus far his memory served him, that upon his first seeing *Birtwhistle*, after he came to town, he acquainted him that the notes were not paid; he recollected it was a few days after taking the protest; more than this, he could not intend by the expression referred to in the aforesaid condescendence, and will be pardoned to think, it is making an ungenerous use of so trivial a mistake, to presume a design on his part to disguise the true date when the protest was taken.

Laying these things, therefore, out of the case, and taking the fact as it truly stands, viz. That these notes reached *Edinburgh* no earlier than the 6th *July*; and that the respondent was amused by promises from the 6th to the 13th, that the notes should be paid; and that upon failure of payment, they were, of that date, protested, and the dishonour of the notes notified by letters of the 16th, 20th, and 21st; and that *Berry* stopt payment on the 25th, so overwhelmed with debt, as must, at any rate, occasion a considerable loss upon these notes; the question thereupon arising, is, upon whom that loss ought to lye, whe-

ther upon the petitioner, who having purchased cattle from *Gilinders* to the full value, indorsed him these notes in security and payment of the price of the cattle; or whether *e contra*, that loss ought to lye upon the respondent on account of the alledged failure in the due negotiating these notes.

Birtwhistle being a stranger in this country, and not amenable to the courts here, otherways than by attachment of his person, to oblige him to find caution *judicio fisci*, the respondent brought his action before the sheriff of *Edinburgh*, and obtained warrant to arrest his person, till caution should be found; but as he left *Edinburgh* before the warrant could be executed, he at first proponed a declinature of the jurisdiction; but as that declinature was afterwards past from by a mandate to a procurator to appear for him, and plead his defences *in causa*, the following peremptor defences were pleaded; 1st, "That no recourse is due upon promissory notes by the law of *Scotland*, being only considered as a bare security, ascertaining such a sum of money to be due, and noways entitled to any of the privileges of bills, and even doubtful if they bear interest. 2^{dly}, That altho' the ground of debt libelled had been bills of exchange, (which they are not) they have lost this privilege, by neglecting to negotiate them in due time, since they are not protested, or any notification sent to the indorser of the dishonour, for thirteen days after the term of payment, or more.

The first of these, which is now given up, was a most unfair defence; as the petitioner could not be ignorant, that by the docquetted account, of even date with the promissory notes, it had been specially ascertained, that recourse was to be competent, if the notes were not paid.

The respondent being thereupon advised, that it was proper to ground his action both upon the afore said docquetted accompt and promissory notes; and to secure *Birtwhistle's*

ple's effects in this country by arrestment, raised letters of arrestment, *jurisdictionis fundandæ gratia*, and thereupon brought the present action; which, coming of course before the Lord *Kennet*, the several interlocutors complained of by this petitioner were pronounced, the justice of which the respondent is now humbly to maintain.

And as the petitioner in his defences before the sheriff, did specially plead, that promissory notes were not entitled to the privileges of bills of exchange, it must follow by necessary consequence, that they are not laid under the same strict rules of negotiation, as, by law and practice, are requisite in bills of exchange, which being *juris gentium*, the vehicles of trade between different nations, are, for the benefit of commerce, and, by general consent, allowed many and great privileges; and in respect to these, are in like manner subjected to the strictest rules of due negotiation; and more particularly, that if not duly honoured by acceptance or payment, they must be protested upon the last of the three days of grace, and the dishonour notified *quam primum* to the drawer.

Whether it would be expedient that the privileges granted to bills of exchange, or the strict rules of negotiation imposed upon these, should be extended to promissory notes, which are not *juris gentium*, may, with reason, be doubted; it is sufficient for the respondent's purpose, that neither of these do obtain either by law or practice.

In our neighbouring country, it required a special statute no further back than the 9th and 10th of King *William*, authorising inland bills of exchange, to have the same days of grace that by former practice was allowed in foreign bills, and, in default of payment, to be protested by a notary publick, and which, *inter alia*, specially enacts, that such protest shall, within the space of 14 days thereafter, be notified to the party from whom the bills were received; whereas, in the case of foreign bills, both law and practice

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practice did require, that the dishonour should be notified *quam primum*.

By the statute 3d and 4th of *Queen Ann*, *cap. 9.* promissory notes were declared to be assignable in the same manner, as inland bills of exchange are, and action to be competent for payment of these, at the instance of that person to whom the note is assigned or indorsed, against those who assigned or indorsed the same, as in case of inland bills, of which protest notice shall be given within 14 days thereafter.

From the authority of these statutes it will be obvious to your Lordships, that if this action had been sued in the courts of *England*, where the petitioner resides, no defence could have lain against the recourse, on account of any alleged failure in the negotiating these promissory notes: They could not be protested against *Berry*, the granter of these notes, within the three days of grace allowed in foreign bills, as they had not come to hand till several days after the term of payment: And it has already been shown, from the date of the indorsations and distance of place, that it could not possibly be in the view of parties, that they should either be presented or paid at the precise period when they became due; and it is equally apparent, that tho' they had been protested the day they came to the pursuer's hands, it could not have served the petitioner in the smallest degree, as no summary diligence could have been raised thereupon, either at the respondent's instance, or *Birtwhistle's*; and therefore, as the protest was timeously taken upon the 13th, and the dishonour repeatedly notified by three consecutive letters, all within the 14 days, it is a clear case, that had this action been brought in the courts of *England*, the petitioner must have been cast with full costs of suit.

It therefore remains for consideration, whether the respondent shall be cut out of that recourse, because the action

tion happens to be brought in the courts of this country, where neither law nor practice, to the respondent known, requiring such exact negotiation of promissory notes as is here contended for on the part of the petitioner.

There is this material difference in the laws of the two countries, that promissory notes are, by the laws and practice of *England*, probative and obligatory, whether holograph or not; whereas, by the laws and practice of *Scotland*, they are neither probative nor obligatory, unless holograph, which the notes in question confessedly are; and, was it not that the contrary practice has obtained, it might with reason be doubted how far in this country, where there is no express statute for that purpose, they could pass by indorsement, whereby to intitle the indorsee either to protest the same or sue for payment.

That by the law and practice of *Scotland*, they are not intitled to any of the privileges of bills of exchange, whether foreign or inland, is a proposition so well established, that it cannot admit of a question. No further back than the 1708, in the case of *Arbutnot contra Scott*, a merchant's promissory note was found not to be of the nature of a bill of exchange, and therefore null, for want of the legal solemnities of other writs; and tho', by the later practice, they have been sustained as good documents of debt when holograph, they are still considered as intitled to none of the other privileges of bills of exchange, and consequently cannot be subjected to those strict rules of negotiation peculiar to bills of exchange, foreign or domestic: They stand upon the same footing as any common instrument of debt; and, tho' allowed to pass by indorsement, such indorsement has but the effect of a common assignment: They are compensable by the debt of the indorser; and every other defence that would have been competent against the indorser, is equally competent against the indorsee; and they are equally liable to arrestments, as any

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other debt ; and so this point has been repeatedly judged, particularly, in the case of *Bundie contra Kennedy* of *Cullean*, 12th *February* 1708 ; and again, in the case of *Forbes contra Innes*, 2d *February* 1739 ; and which is now so much *triti juris*, as to be no longer the ground of a question.

And so standing the law and practice of this country, that promissory notes, tho' holograph, have none of the privileges of bills of exchange, it lyes upon the petitioner to show by what law they should be subjected to those strict rules of negotiation which are requisite in bills of exchange, allowing inland bills to be upon the same footing with foreign bills, which is not the case in our neighbouring country ; and it is reasonable to suppose, that the rules of strict negotiation enjoined in the case of bills of exchange. are in consideration of the great and extraordinary privileges with which they are endowed ; and that being the case, as the indorsement to a promissory note stands precisely upon the same footing, and has the self same effect as a common assignment to any other debt, if it is true, which will scarce be disputed, that a common assignee is not bound to any diligence towards operating payment of the debt assigned, and that no failure therein can forfeit his recourse against the cedent, where such recourse is specially provided for. Was it necessary, the respondent would be justified in maintaining, that he was under no obligation, either to have protested the notes, or to have notified the dishonour to the petitioner.

There is, indeed, this material difference between a common assignment and the indorsement of a bill, that in the case of the former, there lyes no recourse, tho' the assignee, after using all the diligence the law can give, fails in operating payment ; because the warrantice in the assignment, where nothing further is specially provided, imports no more than *debitum jubesse*, and the assignee takes his hazard of the solvency

solvency of the debtor ; whereas, in bills of exchange, *favore commercii*, recourse is granted against the drawer or indorsee, providing the indorsee, or holder of the bill, has followed out the rules of negotiation prescribed in such cases ; but which distinction does not apply to the case in hand, where, from the docquet subjoined to said fitted account, as relative to the indorsement of said promissory notes, such recourse was specially provided for, whereby the indorsement to these promissory notes was, by the agreement of parties, put on the same footing with a common assignment, containing warrandice not only *debitum subesse*, but that the debt should actually be made good.

Nothing is more common in the mercantile practice, than to lodge in the hands of a banker or merchant, a number of bills blank indorsed, for security and repayment of the sums advanced ; but it was never understood that the merchant or banker was bound, either to negotiate, or to do diligence upon the bills so deposite, he holds the bills for his security : It is the business of the indorser, to see that they are paid, but if payment is not made, he is still liable for the debt, for security of which the bills were indorsed ; and there is no material difference between that and the present case, the petitioner was debtor in the price of the cattle bought, in security of payment of which debt, he indorsed to the respondent, for behoof of *Gillenders*, these promissory notes, which being dishonoured, he is, by every principle of law and justice, liable in payment of the price of the cattle.

The petitioner is pleased to contend, that as recourse was in this case specially provided by the docquetted account, relative to the indorsement of these promissory notes : There was an implied obligation upon the respondent, to do what was necessary for operating payment of these promissory notes ; and consequently, that his failzie therein must bar the recourse : But this is plainly begging the
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the question ; no such condition would be implied in a common assignment, with the most absolute warrandice *debitum subesse*, and that the debt should be effectual ; so that allowing the indorsement to a promissory note, to be *in pari casu* with such assignment, as no failure of diligence would forfeit the assignee's recourse upon the warrandice of his assignation, neither can such forfeiture strike against the indorsee of a promissory note.

But the respondent has no occasion, in the present case, to plead the point so high : No summary diligence was competent upon these promissory notes, payment was demanded how soon the notes came to hand ; the demand was renewed, and payment promised for several successive days : *Berry* was at the time of unsuspected credit ; the taking the protest a few days sooner, would not have benefited the petitioner in the smallest degree ; and as the dishonour of the notes was notified by repeated letters in a very few days after the protest was taken, addressed to the petitioner at his place of residence in *England*, he submits it to your Lordships, whether he was guilty of such undue delay, in negotiating these promissory notes, under the circumstances of the case as above stated, as ought on that account, to forfeit the recourse, and subject him to the loss arising from the unexpected supervening bankruptcy of *Berry* the acceptor : If the petitioner can point out any law or practice, that does require the same degree of strict negotiation to be requisite in the holders of such promissory notes, as in the case of bills of exchange, he may possibly prevail ; but if there is no such law or practice, your Lordships will not be disposed to inflict so heavy a forfeiture for a supposed transgression, or failzie, which has no authority, to the respondent known, either in the law or practice of this country.

The petitioner states it as a doubtful matter, whether *Berry's* bankruptcy did not break out as early as the 20th
July

July, instead of the 25th, as averred by the respondent; but as it does not occur, what difference this can make upon the question now at issue, it shall suffice to refer to the petitioner's own letter, dated at *Edinburgh*, the 29th *July*, addressed to Mr. *Gillenders*, wherein he gives account of *Berry's* notes being still unpaid, and that he had stopt payment on the 25th; and as it cannot be imagined that the petitioner was then ignorant of the fact, he cannot be allowed now to retract what he thus explicitly acknowledged; however immaterial it must appear, whether *Berry's* bankruptcy did truly happen upon the 25th, or a few days preceeding.

The *last* ground of complaint, is the petitioner's being found liable in expences, the accompt of which the Lord Ordinary has been pleased to modify to 17 *l.* 17 *s.* besides the expences of extracting the decreet; and as the petitioner has thought it material to subjoin a copy of the accompt itself, the respondent will be pardoned to think, that if either party had cause to complain of the sum awarded, it was he, not the petitioner, that ought to have been the plaintiff: The articles of the accompt will speak for themselves; the petitioner's particular situation, as being a stranger in this country, and not amenable to the courts here, otherways than by arrestment of his person or his effects, made it necessary to institute the original suit before the sheriff, in order to obtain a warrant to arrest his person, till caution should be found *judicio fisci*; which warrant was accordingly obtained, tho' the effect thereof was disappointed, by his withdrawing his person before it could be got execute; and that this was not an improper precaution, appears from the defence which he first pleaded, a declinature of the jurisdiction, in respect of his not being amenable to the courts here: There is not in the whole accompt, one article stated of actual debursements that were not truly paid out: The lawyers are moderate

derate, one consultation only for each session, the other articles are stated according to the regulations: And if the respondent is not forfeited of the recourse upon the promissory notes themselves, there is equal justice that he should be indemnified of the expences he has been put to, in suing for payment.

In respect whereof, &c.

ALEX. LOCKHART.

